Lutheran Hospital of Maryland, Inc. *and* Professional & Health Care Division Retail Store Employees Union, Local 692, United Food & Commercial Workers International Union, AFL-CIO-CLC

Lutheran Hospital Chapter of the Maryland Nurses Association *and* Professional & Health Care Division Retail Store Employees Union, Local 692, United Food & Commercial Workers International Union, AFL-CIO-CLC. Cases 5-CA-11382 and 5-CB-3185

December 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On the basis of charges filed by Professional & Health Care Division Retail Store Employees Union, Local 692, United Food & Commercial Workers International Union, AFL-CIO-CLC (hereinafter the Charging Party), on August 28, 1979, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 5, issued an order consolidating cases, complaint, and notice of hearing against Lutheran Hospital of Maryland, Inc. (hereinafter Respondent Employer), and Lutheran Hospital Chapter of the Maryland Nurses Association (hereinafter Respondent Union) on May 1, 1980. The consolidated complaint alleges that Respondent Employer and Respondent Union violated Section 8(a)(1) and (2) and Section 8(b)(1)(A) of the Act, respectively, by executing a collective-bargaining agreement recognizing Respondent Union as the sole and exclusive collective-bargaining representative of the employees in an appropriate unit.

Thereafter, on October 29 and November 3 and 7, 1980, the parties to this proceeding entered into a stipulation of facts and of the record. The parties agreed that the stipulation of facts with its exhibits attached thereto constituted the entire record in this case and that no oral testimony was necessary or desired by any of the parties. They waived a hearing before, and the making of findings of fact and conclusions of law by, an administrative law judge, and submitted the proceeding for findings of fact, conclusions of law, and an order directly to the Board. On January 14, 1981, the Board approved the stipulation and ordered the proceeding transferred to the Board. Thereafter, the General Counsel, Respondent Employer, and Respondent Union filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record herein and the briefs and makes the following findings of fact and conclusions of law:

I. THE BUSINESS OF RESPONDENT EMPLOYER

Respondent Employer, a Maryland corporation, is engaged in the business of providing inpatient and outpatient health care services at its facility in Baltimore, Maryland. During the 12 months preceding the making of the stipulation, a representative period, Respondent Employer's gross revenues exceeded $250,000. During the same period, Respondent Employer purchased and received in interstate commerce materials and supplies valued in excess of $25,000 from points located outside the State of Maryland. The parties stipulated, and we find, that at all times material herein Respondent Employer was an "employer" as defined in Section 2(2) of the Act, engaged in "commerce" and in operations "affecting commerce" as defined in Section 2(6) and (7) of the Act, respectively.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 692 and the Lutheran Hospital Chapter of the Maryland Nurses Association are, and at all times material herein have been, labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Stipulated Facts*

In 1974, Respondent Employer voluntarily recognized Respondent Union pursuant to a third-party card check. Since that time, Respondent Employer and Respondent Union have met each year and exchanged memoranda concerning wages, hours, and working conditions. The agreements reached in these meetings were submitted to unit employees for approval. Subsequently, a written memorandum detailing each agreement was prepared and distributed to each unit employee. No collective-bargaining agreement as such was executed by the parties until 1979.

In December 1978, Respondent Union held a meeting of its membership to compile suggestions of issues and proposals to discuss during the 1979 sessions with Respondent Employer. A list of these proposals was sent to Respondent Employer later that month.

Respondents met to discuss Respondent Union's proposals on February 1, 1979.[1] Respondent Employer responded to Respondent Union's proposals and presented counterproposals. Most issues were

[1] All dates hereinafter are in 1979 unless otherwise specified.

settled except for the health and welfare package which the parties agreed to meet on again in April. This meeting was later postponed until June. In the meantime, the employees met and voted to accept the agreements reached at the February meeting on other issues and to leave the health and welfare issue open.

Sometime in late June, the associate executive director of Respondent Union, Fennell, received a call from a unit employee saying that over the years the employees had lost track of what they had agreed to and requesting that Respondent Union obtain a written collective-bargaining agreement. On July 23, Respondent Union held a meeting of the employees to explain the status of the health and welfare matter. After Respondents met together on July 24, Respondent Union agreed to let Respondent Employer meet with the employees to explain the health and welfare package.

On or about July 9, the Charging Party conducted its initial organizational meetings among employees employed by Respondent Employer. At these meetings, the Charging Party solicited and received authorization cards designating it as the collective-bargaining representative. On July 27, the Charging Party began distribution of its newsletter among Respondent Employer's employees.

At the end of July, Fennell met with Respondent Employer's lawyer to discuss the possibility of obtaining a written collective-bargaining agreement. The two agreed to review the memoranda and prepare proposed agreements. On August 1, they compared their proposals and found them almost identical. Later Respondent Employer's representatives met with the employees, and explained the health and welfare package. A ballot on the package was distributed to the employees. Also on August 1, the Charging Party sent Respondent Employer a telegram concerning alleged interrogation of employees about their union activity and demanding that such activity cease.

On August 9 and 14, Respondents met to finalize the collective-bargaining agreement. They agreed to meet again on August 16 to review the draft and sign the agreement. On August 15 Respondent Employer received a registered letter from the Charging Party claiming majority status and requesting recognition.

Respondents met on the morning of August 16 and approved the final draft of the agreement. Respondent Employer showed Respondent Union the Charging Party's letter and Respondent Union assured Respondent Employer that it represented a majority of the employees. Respondent Union then met with the employees, who approved the contract. Accordingly, later on August 16, Respondents signed the collective-bargaining agreement. On August 17, the Charging Party filed a petition with the Board.

B. *Discussion and Conclusion*

The General Counsel contends that Respondents violated the Act by signing the collective-bargaining agreement at a time when a question concerning representation existed. The General Counsel argues that such question concerning representation was raised by the Charging Party's organizing activity beginning in July 1979.

In *RCA del Caribe, Inc.*,[2] the Board recently reexamined the law applicable to situations where an incumbent union is challenged by an "outside" union. In *RCA del Caribe*, the Board held that the raising of a question concerning representation, even by the filing of a valid representation petition, will no longer require or permit an employer to withdraw from bargaining, nor will an employer be privileged to refuse to execute a contract with an incumbent union. Thus, Respondent Employer here did not violate Section 8(a)(2) by executing the collective-bargaining agreement and would have violated Section 8(a)(5) had it declined to do so. It necessarily follows that Respondent Union did not violate Section 8(b)(1)(A) by executing the contract either. Accordingly, we shall dismiss the consolidated complaint in its entirety.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[2] 262 NLRB 963 (1982).

[3] Chairman Van de Water concurs in the result on the basis of his dissenting opinion in *RCA del Caribe, supra*. In that opinion, the Chairman stated that he "would require the filing of a petition to trigger an employer's obligation of neutrality when confronted by competing claims of incumbent and challenger unions." *Id.* at fn. 18. Here, the petition was not filed until the day after Respondents signed the collective-bargaining agreement. Accordingly, the Chairman concludes that the Respondents did not violate the Act by executing the agreement and concurs in the dismissal of the consolidated complaint.